

Appln. No. 09/882,820  
Amendment dated August 15, 2005  
Response to Office Action dated April 12, 2005

### REMARKS

Reconsideration and allowance of the above-identified application are respectfully requested. Claims 1-20 remain pending.

The Examiner has requested that the status of the patent applications referenced in the specification be updated, which is being done per the above amendments to the specification.

The Examiner has objected to the term "capable of" in claims 1, 5, 12 and 16. Although Applicant respectfully disagrees with this objection, to advance prosecution, the term "capable of making" is being changed to "adapted to make". In addition, claims 1, 5, 12 and 16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite due to the term "the class-of-service". Accordingly, these claims are being amended to change the term to "a class-of-service" at the appropriate locations in the claims.

In view of these amendments, Applicant respectfully requests that the Examiner withdraw these objections and the § 112, second paragraph, rejection.

Turning to the substantive rejections, Applicant notes that the Examiner has rejected claims 1-20 in view of the judicially created doctrine of double patenting over claims 1-30 of U.S. Patent No. 6,873,839. In particular, the Examiner contends that claims 9, 15, and 25-27 of the '839 patent are equivalent to pending claims 1-4 of the present application. The Examiner further contends that claims 6-8, 13 and 17 of the present application are equivalent to claims 6-8 and 17 of the '839 patent. The Examiner also rejects claims 5, 9-12, 14, 15, 16 and 18-20 of the present application for similar reasons. In response to this rejection, Applicant respectfully submits that certain

Appln. No. 09/882,820  
Amendment dated August 15, 2005  
Response to Office Action dated April 12, 2005

distinctions exist between the present claims and the claims of the '839 patent that the Examiner cites.

In particular, Applicant notes that independent claim 1 of the present application includes the steps of transmitting voice, video or data over a routing path of the terminals serving as nodes, determining a class of service of the call and whether voice, video, or data is to be transmitted by the call, and selecting a routing path based on whether voice, video or data is to be transmitted and the latency and bit error rate. Applicant respectfully submits that none of the claims of the '839 patent explicitly recite the transmission of video, and the selection of a routing path over which video, voice or data can be transmitted based on bit error rate and latency. Granted, claim 25 of the '839 patent recites the transmission of voice or data, and that the class of service is determined depending on whether voice or data is being transmitted. Claim 25 of the '839 patent further recites that the routing path can be selected based on the class of service as well as latency, bit error rate and battery level. However, claim 25 does not recite the transmission of video data, and claim 25 includes the additional characteristic of "battery level" when making a routing path selection.

In addition, Applicant notes that dependent claims 9, 15 and 24 of the '839 patent recite that class of service information can include "video type information". However, Applicant notes that claims 9, 15 and 24 depend indirectly from independent claims 1, 10 and 16 which recite that a routing path is selected based on battery status, and not bit error rate or latency.

Appln. No. 09/882,820  
Amendment dated August 15, 2005  
Response to Office Action dated April 12, 2005

Applicant also notes that independent claims 5 and 16 of the present application, recite the ability to transmit voice, video or data, and the ability to select the routing path (claim 5) or discriminate between routing paths (claim 16) based on bit error rate and latency.

Applicant further notes that independent claim 12 recites that at each terminal, a routing table is generated for use by that terminal and other terminals in determining the routing path of a call. The routing table includes informational data about a class of service of the call, and the method of claim 12 further recites that a path for routing is selected based on the informational data about the class-of service.

Applicant recognizes that dependent claims 9, 15 and 24 of the '839 patent recites that routing table information can further include class-of-service information, and that routing can further be based on class-of-service information. However, Applicant respectfully submits that these claims depend indirectly from independent claims 1, 10 and 16, respectively, which recite that routing is based on battery status.

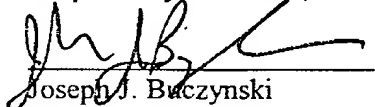
Hence, Applicant respectfully submits that as can be appreciated from the above, prior art that could potentially render certain claims of the '839 patent invalid would not necessarily render the claims of the present application unpatentable, and vice-versa. Applicant therefore respectfully submit that the claims of the present application differ enough from the claims of the '839 patent to indeed be "patentably distinct" from the claims of the '839 patent. Accordingly, Applicant respectfully requests that the obviousness-type double patenting rejection be withdrawn.

Appln. No. 09/882,820  
Amendment dated August 15, 2005  
Response to Office Action dated April 12, 2005

Finally, concerning the Examiner's statement in paragraph 8 on page 6 of the Office Action regarding claims 1-50 of the referenced applications, Applicant respectfully notes that claims 1-50 of the '434, '479, '480, '499, '169 and '170 applications were canceled, and the '305 application only included claims 1-27, which were cancelled.

In view of the above, it is believed that the subject application is in condition for allowance and notice to this effect is respectfully requested. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

  
Joseph J. Baczynski  
Attorney for Applicant  
Reg. No. 35,084

Gardner Carton & Douglas LLP  
1301 K. Street, NW, Suite 900  
Washington, DC 20005  
Phone: (202) 230-5114  
Facsimile: (202) 230-5314

Dated: August 15, 2005

#### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this Amendment (along with any documents referred to as attached or enclosed) is being transmitted by facsimile to the United States Patent and Trademark Office, Attention: Examiner Man U. PHAN, Art Unit 2665, Facsimile Number 571-273-8300, on the date indicated.

Marc LaVere  
Printed Name  
Date: 8/15/05

Marc LaVere  
Signature